IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED : 22.09.2016

CORAM:

THE HON’BLE MR. JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR. JUSTICE N.AUTHINATHAN

C.M.A.No.2189 of 2016
C.M.P.No.15677 of 2016

The Proprietor,
National Insurance Company Ltd.,
No.62, TSR, Periyatheru,
Kumbakonam,
Tanjore District. ... Appellant

Vs.

1. Rani Flora
2. Minor Kanishkar
3. Minor Santhiyamery
4. Minor Aphrina
   (Minors are represented by their mother, 1st respondent)
5. Meena Mery
6. Hema Mery
7. Emilimery
8. S.Sarama ... Respondents

The Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act against the judgment and decree, dated 23.03.2013 made in M.C.O.P.No.206 of 2012, on the file of the Motor Accidents Claims Tribunal (Principal District Judge) Ariyalur.

For Appellant : Mr.R.Sree Vidhya

JUDGMENT

(Judgment of this Court was delivered by S.MANIKUMAR, J.)

Quantum of Rs.15,79,200/- with interest at the rate of 7.5% per annum, from the date of claim, till realisation, is the challenge in this appeal, and in particular, to the determination of monthly income of the deceased at Rs.8,775/-, for the purpose of computing the loss of contribution to the family.

2. PW.1, wife of the deceased has claimed that the deceased, aged 42 years, was doing furniture business and earned Rs.40,000/- per month. In support of the same, she has marked Ex.P12 – Work Orders and Ex.P13 – EB Bills. Upon perusal of the same, the Tribunal has found that in most of the work orders, the name of the deceased was not shown. However, on the basis of Ex.P12 – Work Orders, fixed the monthly income of the deceased at Rs.9,000/- per month, for the purpose of computing the loss of contribution to the family.

3. In Sri Ramachandrappa Vs. The Manager, Royal Sundaram Alliance Insurance Company Ltd., reported in 2011 (2) TNMAC 190 SC, a sum of Rs.4,500/- has been claimed as monthly wages for the deceased, stated to be a coolie. The claims tribunal had taken Rs.3,000/- for the purpose of computing the loss of contribution to the family. However, when the matter was taken up on appeal, the Supreme Court having regard to the wages of a labourer, during the relevant period (2004 - between Rs.100 to Rs.150/- per day) found fault with the tribunal for reducing the claim from Rs.4,500/- to Rs.3,000/- and determined the income at Rs.4,500/-.

4. In the case on hand, the accident has occurred on 05.05.2012 and on the facts and circumstances of the case and in the light of the above decision, merely because, in most of work orders, produced by the respondents/claimants and in particular, Ex.P12, to substantiate his avocation, the name of the deceased was not shown, it cannot be said that the Tribunal has committed a manifest illegality, by fixing the monthly income as Rs.9,000/-.

5. Though no document has been filed to prove self employment, to provide food, shelter, clothing, education and to meet out the basic necessities, regular expenditure, such as payment of electricity charges, water tax and other incidental expenses, it could be reasonably presumed that the deceased would have engaged in some avocation. In Sri Ramachandrappa's case, the Hon'ble Supreme Court having considered the wages, which prevailed during the year of accident (2004), fixed the monthly income at Rs.4,500/-. Therefore, even as per the judgment of the Hon'ble Supreme Court, wages for even a labourer, in the year 2008, would have increased. Determination of Rs.9,000/- per month, in the year 2008, for computing the loss of income, cannot be said to be without any basis, and in our view, it is just and reasonable.

6. After adding 30% towards future prospects and deducting 1/4th towards the personal and living expenses of the deceased,

the Tribunal has applied 14 multiplier, to the age of the deceased, 42 years and computed Rs.14,74,200/- (Rs.8,775/- x 12 x 14) towards loss of dependency compensation. That apart, the Tribunal has awarded Rs.25,000/- towards loss of consortium, Rs.70,000/- for loss of love and affection and Rs.10,000/- towards funeral expenses. Altogether, the Claims Tribunal has awarded Rs.15,79,200/- with interest at the rate of 7.5% per annum.

7. The deceased was survived by his wife, sons, daughters and mother. Though there are seven claimants, the Claims Tribunal has deducted only 1/4th towards the personal and living expenses of the deceased. As per the decision of the Apex Court in Sarla Verma v. Delhi Transport Corporation reported in 2009 (2) TNMAC 1, the Claims Tribunal ought to have deducted 1/5th towards the personal and living expenses of the deceased.

8. 'Consortium' as per the Best v. Samuel Fox reported in 1952 AC 716 means, "Duty owned by a wife to her husband and vice versa, companionship, love and affection, comfort, mutual services, sexual intercourse, etc." Consortium is not a pecuniary loss. It is certainly a conventional damage awarded to a widow, who has lost her husband. In Rajesh and others v. Rajbir Singh and others reported in 2013(3) CTC 883, the Hon'ble Apex Court, while observing that at least a sum of Rs.1 Lakh has to be awarded to the widow, for loss of consortium, held as follows:

> "In legal parlance, 'Consortium' is the right of the spouse to the company, care, help, comfort, guidance, society, solace, affection and sexual relations with his or her mate. That non-pecuniary head of damages has not been properly understood by our Courts. The loss of companionship, love, care and protection, etc., the spouse is entitled to get, has to be compensated appropriately. The concept of non-pecuniary damage for Loss of Consortium is one of the major heads of award of compensation in other parts of the world more particularly in the United States of America, Australia, etc. English Courts have also recognized the right of a spouse to get compensation even during the period of temporary disablement. By Loss of Consortium, the Courts have made an attempt to compensate the loss of spouse's affection, comfort, solace, companionship, society, assistance, protection, care and sexual relations during the future years. Unlike the compensation awarded in other countries and other jurisdictions, since the legal heirs are otherwise adequately compensated for the pecuniary loss, it would not be proper to award a

major amount under this head. Hence, we are of the view that it would only be just and reasonable that the Courts award atleast Rupees one lakh for Loss of Consortium.”

In the case on hand, the Claims Tribunal has awarded Rs.25,000/- only, towards loss of consortium.

9. Quantum of Compensation of Rs.10,000/- awarded under the head, funeral expenses, is less. On the aspect of quantum of compensation, under the head, funeral expenses, the Hon'ble Supreme Court in Rajesh and others Vs. Rajbir Singh and others reported in 2013(3) CTC 883, held as follows:

> “21. We may also take judicial notice of the fact that the Tribunals have been quite frugal with regard to award of compensation under the head 'Funeral Expenses'. The 'Price Index', it is a fact has gone up in that regard also. The head 'Funeral Expenses' does not mean the fee paid in the crematorium or fee paid for the use of space in the cemetery. There are many other expenses in connection with funeral and, if the deceased is follower of any particular religion, there are several religious practices and conventions pursuant to death in a family. All those are quite expensive. Therefore, we are of the view that it will be just, fair and equitable, under the head of 'Funeral Expenses', in the absence of evidence to the contrary for higher expenses, to award at least an amount of Rs.25,000/-.”

10. Legal representatives of the deceased, in particular, minor children have lost the love and affection of the deceased. In Rajesh v. Rajbir Singh reported in 2013 (2) TNMAC 55, the Hon'ble Apex Court has awarded Rs.1,00,000/- each to the legal representatives of the deceased, towards the loss of love and affection. However, in the case on hand, the Claims Tribunal has awarded only Rs.70,000/- towards loss of love and affection to the minor children and aged mother, which is not, but meagre. There is no award towards damages to clothes and articles.

11. The quantum of compensation of Rs.15,79,200/-, awarded to the claimants, cannot be said to be a bonanza or windfall, warranting any reduction. In the light of our discussion, the Civil Miscellaneous Appeal is dismissed. The appellant-Insurance Company, is directed to deposit the award amount, with proportionate accrued interest and costs, less the statutory deposit, to the credit of M.C.O.P.No.206 of 2012, on the file of the Motor Accidents Claims Tribunal (Principal District Judge) Ariyalur, within a period of four weeks from the date of receipt of a copy of this order. On such deposit, the respondents 1, 4,

5, 6 & 7/claimants are permitted to withdraw the same, by making necessary applications, before the Tribunal. The share of the minors shall be deposited in any one of the Nationalised Banks in fixed deposit under the reinvestment scheme initially for a period of three years. The interest accruing on the share of the minors shall be paid to the guardian once in three months, till they attain majority. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

skm

To

The Motor Accident Claims Tribunal,
(Principal District Judge)
Ariyalur.

C.M.A.No.2189 of 2016

PPA(CO)
CA(25/10/2016)